

GAHC010287192023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/7403/2023

M/S ANAND POLYMERS
G-4, HANUMAN TOWER, S.J.ROAD, ATHGAON, GUWAHATI- 781001, DIST.
KAMRUP (METRO), ASSAM, REPRESENTED BY ITS POWER OF ATTORNEY
HOLDER AND AUTHORISED SIGNATORY, SRI UJJWAL KUMAR AGARWAL,
RESIDENT OF FLAT NO. 5A, 5TH FLOOR, JIBNEHAAR APARTMENT, BY-
LANE NO. 5, TARUN NAGAR, GUWAHATI - 781005, DIST.- KAMRUP
(METRO), ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM,
FINANCE DEPARTMENT, BLOCK F, ASSAM SECRETARIAT DISPUR,
GUWAHATI- 781006, ASSAM

2:THE COMMISSIONER OF TAXES
ASSAM
KAR BHAWAN
DISPUR
GUWAHATI- 781006
ASSAM

3:THE SUPERINTENDENT OF TAXES
CENTRAL VAT AUDIT CELL
OFFICE OF THE COMMISSIONER OF TAXES
ASSAM
KAR BHAWAN
DISPUR
GUWAHATI- 781006
ASSAM

4:THE COMMISSIONER OF INDUSTRIES AND COMMERCE

ASSAM
BAMUNIMAIDAN
GUWAHATI- 781021
ASSAM

5:THE GENERAL MANAGER
DISTRICT INDUSTRIES AND COMMERCE CENTRE
KAMRUP
AMINGAON
ASSA

Advocate for the Petitioner : DR ANKIT TODI

Advocate for the Respondent : SC, TAXES

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : 20.12.2023

Heard Dr. A. Todi, learned counsel appearing on behalf of the petitioner. Also heard Mr. B. Gogoi, learned Standing Counsel, Finance & Taxation Department, appearing for respondent Nos. 1, 2 and 3 as well as Mr. A. Kalita, learned Standing Counsel, Industries Department, appearing for respondent Nos. 4 and 5.

2. Issue notice, returnable on **07.02.2024**.

3. As the respondents are duly represented, no formal steps are required to be taken for service of notice. Extra copies of the writ petition be served upon the learned counsel appearing for the respondents during the course of the day.

4. The petitioner herein, on the basis of the Industrial Policy of Assam, 2008, had set up its industrial unit at Changsari, in the district of Kamrup (R), Assam and commenced commercial production with effect from 12.12.2013. It is the case of the petitioner that in view of the Industrial Policy of Assam, 2008, the Industries Department, Assam, had declared that there would be tax exemption incentives in the

form of Value Added Tax (VAT) exemption on goods, which are manufactured in Assam, by way of remission up to 99% of the tax payable under the Assam Value Added Tax Act, 2003 (hereinafter referred to as "Assam VAT Act") and the Central Sales Tax Act, 1956. On the basis of the said industrial policy, the Assam Industries (Tax Exemption) Scheme, 2009 was notified. The petitioner was issued a certificate of entitlement by the concerned respondent authorities. It is the specific case of the petitioner that in view of the Industrial Policy of Assam, 2008, read with the Assam Industries (Tax Exemption) Scheme, 2009 the petitioner was entitled to exemption of tax to the extent, as mentioned in the Industrial Policy Resolution as well as the Scheme of 2009, on goods manufactured by the petitioner's industrial unit unless such goods fall within the ambit of the negative list. It is on the basis thereof the petitioner submitted Self Assessment for the year 2017-2018. However, the Assessing Officer, vide order dated 27.04.2022 had set aside the Self Assessment and carried out the audit assessment thereby depriving the petitioner of the exemption of tax in respect of all other goods, except in respect of Pain containers and Poultry feeder, which are manufactured by the petitioner. It is under such circumstances the petitioner has therefore approached this Court challenging the said assessment order dated 27.04.2022.

5. I have heard Mr. B. Gogoi, learned counsel appearing for the Finance & Taxation Department who submits that there is an alternative remedy available to the petitioner by way of appeal. This Court, however, is of the opinion that taking into account the judgment of the Supreme Court in the case of ***M/s Godrej Sara Lee Ltd. vs. The Excise and Taxation Officer-cum-Assessing Authority & Ors.***, reported in ***2023 SCC Online SC 95***, wherein it was observed that when a question of law arises, it would not be proper on the part of the High Court to remit the matter to the authorities even though there exists alternative remedy which was not availed of. In view of the aforesaid judgment, this Court is not inclined to accept the contention of the respondent Finance & Taxation Department that there is an alternative and

efficacious remedy available to the petitioner for not entertaining the writ petition. It is the opinion of this Court that a question of law arises on the question of interpretation of the Industrial Policy, 2008 and the Scheme of 2009 as to whether the petitioner would be entitled to the benefits of tax exemption on all goods manufactured in the industrial unit subject to the limits prescribed, or whether the petitioner would be entitled to the exemption only in respect to the finished products mentioned in the entitlement certificate.

6. In that view of the matter, this Court therefore directs the respondent authorities to file affidavit by 01.02.2024. The petitioner, thereafter, shall file their reply, if so advised.

7. As an interim measure, taking into account the question of law involved, this Court stays the impugned Assessment Order dated 27.04.2022 and all consequential action, till the next date.

JUDGE

Comparing Assistant